



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Valley Regional Office

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Robert G. Burnley
Director

R. Bradley Chewing, P.E.
Valley Regional Director

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION

ORDER BY CONSENT ISSUED TO

PolyOne Engineered Films, Inc.
Registration #: 80333

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1187, -1184, -1307(D), -1309, and -1316(C), between the State Air Pollution Control Board and PolyOne, for the purpose of resolving certain alleged violations of environmental law and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Code §§ 10.1-1301 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.

5. “Order” means this document, also known as a Consent Order, and incorporates the additional terms and conditions as set out in Appendix A to this document.
6. “PolyOne” means PolyOne Engineered Films, Inc., a company authorized to conduct business in the Commonwealth of Virginia.
7. “VRO” means the Valley Regional Office of DEQ, located at 4411 Early Road, P.O. Box 3000, Harrisonburg, Virginia 22801.
8. “CFR” means Code of Federal Regulations.

SECTION C: Findings of Facts and Conclusions of Law

On June 29, 2005, PolyOne conducted stack testing on the “stack-in-stack” system (STK-021) serving Calender Line No. 2. The stack test results were received by DEQ on August 5, 2005, and indicated the following:

1. The control efficiency of the “stack-in-stack” system was measured to be 7.58% for PM emissions and 25.42% for VOC emissions. These results are in apparent violation of Condition 6 of the facility’s NSR permit dated December 22, 2004, which requires that the system maintain a control efficiency for PM and VOC emissions of no less than 42.9% on a mass basis (9 VAC 5-80-1180).
2. The hourly emission rates for the “stack-in-stack” system were measured to be 1.95 pounds per hour (lbs/hr) for PM emissions and 5.10 lbs/hr for VOC emissions. These results are in apparent violation of Condition 12 of the facility’s NSR permit dated December 22, 2004, which states that emissions from the system shall not exceed 0.83 lbs/hr for PM and 4.13 lbs/hr for VOCs (9 VAC 5-80-1180).
3. The stack test results indicate that PolyOne was unable to demonstrate compliance with Conditions 6 and 12 within specified timeframes, in apparent violation of Condition 16 of the the facility’s NSR permit dated December 22, 2004. Condition 16 states that the initial performance tests shall be performed, and demonstrate compliance, within 60 days after achieving the maximum production rate at which the modified Calender Line No. 2 will be operated but in no event later than 180 days after startup of the modified line (9 VAC 5-50-30 and 9 VAC 5-80-1200).

Representatives from PolyOne met with DEQ officials on September 20, 2005 to review the alleged violations and report any remedial action taken. At the meeting, PolyOne and DEQ agreed in principle to the corrective action set out in the attached Appendix A to this Order and to the payment of a civil penalty.

SECTION D: Agreement and Order

Accordingly the State Air Pollution Control Board, by virtue of the authority granted it pursuant to Va. Code §§ 10.1-1186(2), 10.1-1309, and 10.1-1316(C), orders PolyOne, and PolyOne voluntarily agrees to the following conditions in settlement of the violations cited in this Order:

1. PolyOne agrees to pay a civil charge of **\$5,900.00** within 30 days of the effective date of this Order. Payment must indicate that the civil charge is paid pursuant to this Order, and shall include PolyOne's Federal Identification Number. Payment shall be by check, certified check, money order, or cashier's check payable to **"Treasurer of the Commonwealth of Virginia"** and sent to:

**Receipts Control
Department of Environmental Quality
P. O. Box 10150
Richmond, Virginia 23240**

2. And, PolyOne shall comply with the terms and conditions as set out in Appendix A to this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of PolyOne, for good cause shown by PolyOne, or on its own motion after notice to PolyOne and its opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; or (3) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, PolyOne admits to the allegations in Section C of this Order.
4. PolyOne consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. PolyOne declares it has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.*, and the Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right of PolyOne to any

administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by PolyOne to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. PolyOne shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. PolyOne shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. PolyOne shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which PolyOne intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and PolyOne. Notwithstanding the foregoing, PolyOne agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. PolyOne petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee

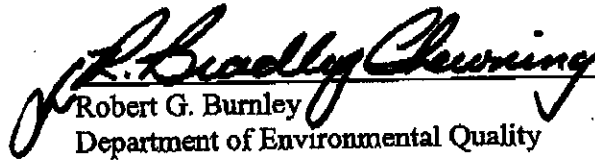
approves the termination of the Order; or

- b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to PolyOne.


Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve PolyOne from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By its signature below, PolyOne voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of Jan 10, 2006.


Robert G. Burnley
Department of Environmental Quality

PolyOne voluntarily agrees to the issuance of this Order.

By: 

Date: 1/4/2006

Commonwealth of Virginia

City/County of Winchester

The foregoing document was signed and acknowledged before me this 4th day of
JANUARY, 2006, by Robert DRAGON, who is
(name)

PLANT MANAGER of PolyOne, on behalf of PolyOne.
(title)


Notary Public

My Commission Expires December 31, 2007

My commission expires: _____

APPENDIX A

In addition to the foregoing, the Virginia State Air Pollution Control Board orders and PolyOne agrees to implement this corrective action plan as an additional provision to this Order. Based on the information obtained to date, DEQ has determined that PolyOne must comply with the terms and conditions as set out below:

1. PolyOne shall provide revised emission factors for Calendar Line No. 2. These emission factors shall account for variability in product width, mass, and line speed. PolyOne shall derive these emission factors from additional performance testing.
2. PolyOne shall submit a test protocol within 45 days of the issuance of this Order and shall complete testing within 45 days of DEQ approval of the test protocol. PolyOne shall submit the test results and apply for a modification to the facility's NSR permit within 45 days of the test completion.
3. If additional testing yields emission factors greater than two times the emission factors derived from the June 2005 testing, DEQ reserves the right to require additional testing to determine PSD applicability.